

FILED

BEFORE THE BUREAU OF REAL ESTATE
STATE OF CALIFORNIA

MAR 10 2014

BUREAU OF REAL ESTATE

* * *

By 

In the Matter of the Application of)
)
ALEXANDRA ROSE LOPEZ,)
)
Respondent.)

Cal BRE No. H-39124 LA

OAH No. 2013100908

DECISION

The Proposed Decision dated February 7, 2014, of the Administrative Law Judge of the Office of Administrative Hearings, is hereby adopted as the Decision of the Real Estate Commissioner in the above-entitled matter.

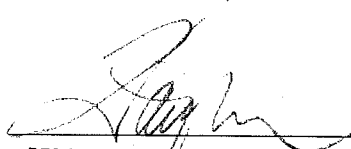
The application for a real estate salesperson license is denied, but the right to a restricted real estate salesperson license is granted to Respondent. A petition for the removal of restrictions from a restricted license is controlled by Section 11522 of the Government Code. A copy is attached hereto for the information of Respondent.

If and when a petition for removal of restrictions is filed, all competent evidence of rehabilitation presented by the Respondent will be considered by the Real Estate Commissioner. A copy of the Commissioner's Criteria of Rehabilitation is appended hereto.

This Decision shall become effective at 12 o'clock noon on APR 01 2014

IT IS SO ORDERED March 5, 2014.

REAL ESTATE COMMISSIONER


WAYNE S. BELL

BEFORE THE
BUREAU OF REAL ESTATE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

ALEXANDRA ROSE LOPEZ,

Respondent.

Case No. H-39124 LA

OAH No. 2013100908

PROPOSED DECISION

This matter came on regularly for hearing before Felix W. Loya, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California, on January 8, 2014. Diane Lee, Counsel, Bureau of Real Estate of the Department of Consumer Affairs of the State of California (bureau) represented complainant Maria Suarez, Deputy Real Estate Commissioner for the bureau. Respondent Alexandra Rose Lopez (respondent) appeared and represented herself at the hearing.

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on January 8, 2014. The Administrative Law Judge makes the following factual findings, legal conclusions and order:

FACTUAL FINDINGS

Jurisdiction and Parties

1. Complainant filed the Statement of Issues in her official capacity for the bureau.
2. Respondent filed an application with the bureau on October 29, 2012 for the issuance of a real estate salesperson license.
3. Complainant refused to issue the license, and on October 22, 2013, the bureau filed the statement of issues initiating this proceeding to determine whether respondent's application should be granted. Respondent requested a hearing and the instant hearing ensued. Jurisdiction exists in this proceeding.

2011 Possession of Marijuana for Sale Conviction

4. On May 16, 2011, in Superior Court of California, County of San Bernardino, Case No. FWV1100654, respondent pled nolo contendere to one count of violating Health and Safety Code section 11359. By that plea, respondent was convicted of possession of marijuana for sale, a felony.

5. On July 19, 2011, respondent was placed on supervised probation under certain terms and conditions for 36 months. The terms and conditions of respondent's supervised probation were extensive and included the following: paying \$945 in fees, fines and costs; serving 120 days in jail with credit for two days served, with eligibility for the weekender/work release program; reporting to the probation officer upon release and every 14 days or as directed by the probation officer; cooperating with the probation officer in a plan of rehabilitation and following all reasonable directives of the probation officer; seeking and maintaining gainful employment or attending school and keeping the probation officer informed of the status of employment or school; not using or possessing controlled substances without a medical prescription, in which case a physician's written notice must be given to the probation officer; not possessing any drug paraphernalia; not associating with persons known to respondent to be illegal users or sellers of controlled substances; submitting to a controlled substance test at the direction of the probation officer; participating in a counseling program as directed by the probation officer; submitting monthly proof of attendance or successful completion of such program to the probation officer and violating no law. Respondent completed all of the terms and conditions of supervised probation. Even though she was convicted of driving under the influence on May 14, 2012, which was during the period of her probation, as set forth in Factual Findings 7 through 9, respondent's probation officer did not violate respondent for that conviction but, instead, recommended that the court grant respondent's motion for early termination of probation and dismissal of the charges. (Exhibit D.) On April 18, 2013, respondent's probation was terminated early pursuant to Penal Code section 1203.3. Respondent's conviction was set aside and the case was dismissed pursuant to Penal Code sections 1203.4 and 1203.4a. (Exhibits 3 and D.)

6. The facts and circumstances of respondent's conviction were that, early in the morning on January 18, 2011, respondent was arrested for being in possession of a bag of marijuana, a gram scale and just under \$1,000 in cash. Respondent had an expired medical marijuana card in her possession.

Respondent's Driving Under the Influence Conviction

7. On May 14, 2012, in Superior Court of California, County of San Bernardino, Case No. TWV1200067, Respondent pled nolo contendere to one count of violating Vehicle Code section 23152, subdivision (b). By that plea, Respondent was convicted of driving under the influence with 0.08% or higher blood alcohol, a misdemeanor.

8. On May 14, 2012, respondent's pronouncement of judgment was ordered withheld and respondent was granted conditional and revocable release for 36 months under certain terms and conditions. The terms and conditions of respondent's probation included violating no law; paying a fine of \$1,827; and attending a court approved alcohol program for three months. Respondent was also ordered not to drive a motor vehicle unless properly licensed and insured; not to drive a motor vehicle with a measurable amount of alcohol in her system; and to submit to a blood alcohol test upon the request of an arresting officer. At the time of the administrative hearing, respondent had completed all of the terms and conditions of probation except payment of the fine. Respondent was paying the fine at the rate of \$55 per month and was scheduled to make her final payment in May 2015, when her probation is also scheduled to expire.

9. The facts and circumstances of Respondent's conviction were that, on December 6, 2011, Respondent was stopped by the police after driving around cones on the street as though she was in a slalom event. Respondent was asked to perform field sobriety tests which she failed. Respondent had been drinking earlier in the evening.

Rehabilitation, Mitigation and Other Factors

10. The following factors indicate rehabilitation:

a. Respondent is remorseful for her criminal behavior. On the witness stand, she candidly and readily admitted the two convictions discussed above. She did not minimize or seek to excuse them. Respondent attended an extra month of a court approved alcohol program, completing four months, instead of just the three she was ordered to complete. Respondent has not used marijuana since her arrest on January 18, 2011. Respondent had been using marijuana to help her sleep. Once respondent stopped using marijuana, she began exercising, playing soccer and basketball, drinking tea at night, and focused on working full time, all of which helped her sleep without the aid of marijuana.

b. Respondent does not socialize with the same people she did when she was arrested for driving under the influence; instead, she spends time with her family. Respondent stopped consuming alcohol shortly after her arrest for driving under the influence and just before she started the court approved alcohol program on December 17, 2011. (Exhibit A.)

c. Respondent has held a full time job at a real estate agency named SoCal Realty & Loans, Inc. since May 2011. Respondent answers the telephone, helps the real estate agents maintain complete files, greets clients, sets appointments, and helps with the log-in and storage of files. Her supervisor, Alfonso Vasquez, who is also her uncle, testified at the administrative hearing. He was aware of her convictions and praised her work ethic and competence. Mr. Vasquez testified that he would be

willing to hire respondent as a real estate salesperson even with a restricted license. Respondent has successfully completed classes for her license provided by the Board of Realtors.

d. More than two years have passed since respondent committed the acts leading to her last conviction. At the time of the administrative hearing, respondent was holding an unrestricted California driver's license.

e. Respondent spends her free time helping her sister take care of her sister's triplets and her other two children. At the time of the administrative hearing, the triplets were a year old.

LEGAL CONCLUSIONS

1. Cause exists to deny respondent's application for a real estate salesperson license for her two convictions based on Factual Findings 4 through 9. The bureau may deny an application for a real estate salesperson license if the applicant has been convicted of a crime that is substantially related to the qualifications, functions, or duties of a real estate licensee. (Bus. & Prof. Code, §§ 475, subd. (a)(2), 480, subd. (a), and 10177, subd. (b).) Respondent's two convictions for possession of marijuana for sale and driving under the influence with a blood alcohol level of 0.08% or more are substantially related to the qualifications, functions and duties of a licensee because they constitute two or more convictions involving the consumption or use of alcohol or drugs when at least one of the convictions involves driving and the use or consumption of alcohol or drugs. (Cal. Code Regs., tit. 10,¹ § 2910, subd. (a)(11).) Respondent's two convictions are also substantially related because they demonstrate a pattern of repeated and willful disregard of law. (CCR, § 2910, subd. (a)(10).)

2. The bureau has established criteria for rehabilitation from the denial of a license based upon conviction of a crime, found at CCR section 2911, which are summarized as follows:

a. Subdivision (a), requiring the passage of at least two years since the most recent conviction, or more if there is a history of unlawful acts, is not satisfied here. Respondent's last conviction occurred less than two years ago. (Factual Findings 7 through 9.)

b. Subdivision (b), requiring restitution, is not applicable here.

c. Subdivision (c), expungement of the conviction, has been met for the first conviction but not the second. (Factual Findings 4 through 9.)

¹ Further references to California Code of Regulations, title 10, are cited as CCR.

d. Subdivision (d), requiring completion of the criminal probation, is met here as to the first conviction but not the second. (Factual Findings 4 through 9.)

e. Subdivision (e), abstinence from drugs or alcohol that contributed to the crime, is satisfied here, as respondent has been drug and alcohol free for over two years. (Factual Finding 10.)

f. Subdivision (f), payment of any fines, is met here for the first conviction but not the second, as respondent is still paying the fines imposed for the driving under the influence conviction. (Factual Findings 4 through 9.)

g. Subdivision (g), stability of family life and fulfillment of parental responsibility, is satisfied here, as Respondent is gainfully employed full time and spends time with her family. (Factual Finding 10.)

h. Subdivision (h), enrollment in or completion of educational or training courses, is satisfied here. (Factual Finding 10.)

i. Subdivision (i), discharge of debts to others, is not applicable here.

j. Subdivision (j), correction of business practices leading to the conviction, is satisfied here, as Respondent has stopped dealing in marijuana altogether. (Factual Finding 10.)

k. Subdivision (k), involvement in community, church, or private programs for social betterment, is satisfied here through respondent's assistance to her sister in caring for her sister's triplets. (Factual Finding 10.)

l. Subdivision (l), which requires new and different social and business relationships, is satisfied here, as respondent no longer socializes with the same people with whom she was socializing when she committed the two crimes. (Factual Finding 10.)

m. Subdivision (m), change in attitude from the time of conviction to the present, is satisfied here, as respondent has given up drugs and alcohol and focused on working and spending time with her family. Respondent has accepted responsibility for committing the crimes for which she was convicted. (Factual Finding 10.)

3. The factors set forth in Legal Conclusion 2 indicate that it is highly unlikely respondent will commit her misconduct again and that she is fully rehabilitated. Respondent has met seven of the 11 criteria for rehabilitation set forth in CCR section 2911 applicable to her. (Legal Conclusion 2.) Respondent has not committed a violation of the law for over two years. Although respondent is still on probation for her second conviction, she has

demonstrated that she has changed her ways and that her current employer has confidence in her change of attitude. (Factual Finding 10 and Exhibit D.) The purpose of these proceedings is to protect the public, not to punish the licensee. (See *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) Thus, it would not be contrary to the public interest to give respondent a properly restricted license.

ORDER

Respondent Alexandra Rose Lopez's application for a real estate salesperson license is denied; provided, however, a restricted real estate salesperson license shall be issued to respondent pursuant to Section 10156.5 of the Business and Professions Code. The restricted license issued to respondent shall be subject to all of the provisions of Section 10156.7 of the Business and Professions Code and to the following limitations, conditions and restrictions imposed under the authority of Section 10156.6 of said Code:

1. The license shall not confer any property right in the privileges to be exercised, and the Real Estate Commissioner may by appropriate order suspend the right to exercise any privileges granted under this restricted license in the event of:

a. The conviction of respondent (including a plea of nolo contendere) of a crime which is substantially related to respondent's fitness or capacity as a real estate licensee; or

b. The receipt of evidence that respondent has violated provisions of the California Real Estate Law, the Subdivided Lands Law, Regulations of the Real Estate Commissioner or conditions attaching to this restricted license.

2. Respondent shall not be eligible to apply for the issuance of an unrestricted real estate license nor the removal of any of the conditions, limitations or restrictions attaching to the restricted license until three years have elapsed from the date of issuance of the restricted license to respondent.

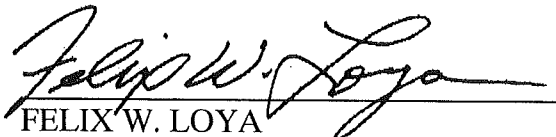
3. With the application for license, or with the application for transfer to a new employing broker, respondent shall submit a statement signed by the prospective employing real estate broker on a form RE 552 or its equivalent approved by the Bureau of Real Estate which shall certify as follows:

a. That the employing broker has read the Decision which is the basis for the issuance of the restricted license; and

b. That the employing broker will carefully review all transaction documents prepared by the restricted licensee and otherwise exercise close supervision over the licensee's performance of acts for which a license is required.

4. Respondent shall notify the Commissioner in writing within 72 hours of any arrest by sending a certified letter to the Commissioner at the Bureau of Real Estate, Post Office Box 187000, Sacramento, CA 95818-7000. The letter shall set forth the date of respondent's arrest, the crime for which respondent was arrested and the name and address of the arresting law enforcement agency. Respondent's failure timely to file written notice shall constitute an independent violation of the terms of the restricted license and shall be grounds for the suspension or revocation of that license.

DATED: February 7, 2014

A handwritten signature in cursive script, reading "Felix W. Loya", written over a horizontal line.

FELIX W. LOYA

Administrative Law Judge

Office of Administrative Hearings